



June 13, 2002

Ms. Pamela Meyer  
Assistant District Attorney  
Dallas County  
411 Elm Street, Suite 500  
Dallas, Texas 75202-3384

OR2002-3200

Dear Ms. Meyer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 164275.

The Dallas County Purchasing Department (the “county”) received two requests for information relating to certain reference checks of bidders conducted for the Dallas County Commissioners Court by Clearview Management Consultants, LLC. The county contends that the requested information is excepted from disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. We have considered the county’s arguments and have reviewed the submitted information.<sup>1</sup>

We note at the outset that this office has previously ruled on the extent to which some of the requested information is subject to required public disclosure. *See* Open Records Letter No. 2002-2786 (2002). Therefore, as the four criteria for a “previous determination” established by this office in Open Records Decision No. 673 (2001) have been met, the county may rely on Open Records Ruling No. 2002-2786 with regard to that particular

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<sup>1</sup>In reaching our conclusion here, we assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information.<sup>2</sup> This open records letter addresses the public nature of only those documents you submitted to this office in connection with the current records requests.

Section 552.104 of the Government Code excepts from required public disclosure "information that, if released, would give advantage to a competitor or bidder." The purpose of section 552.104 is to protect a governmental body's interests in competitive bidding situations. *See* Open Records Decision No. 592 (1991). Section 552.104 requires a showing of some actual or specific harm in a particular competitive situation; a general allegation that a competitor will gain an unfair advantage will not suffice. *See* Open Records Decision No. 541 at 4 (1990). Section 552.104 does not protect information relating to competitive bidding situations once a contract has been awarded and is in effect. *See* Open Records Decision Nos. 306 (1982), 184 (1978).

The county informs us that the requested information relates to a solicitation of competitive bids for a contract to provide information technology. The county states that the selection and approval of the successful bidder, contract negotiation, and execution of the contract remain pending. The county asserts that the release of this information would compromise its negotiation position and interfere with its ability to negotiate the best price. Based on these representations, we conclude that the county has demonstrated that the requested information is excepted from disclosure under section 552.104 of the Government Code. We note, however, that once the competitive bidding process is completed and a contract is in effect, the requested information may no longer be withheld, unless it is excepted from disclosure under some other provision of chapter 552 of the Government Code. *See* Open Records Decision No. 541 at 5 (1990). As section 552.104 is dispositive at this time, we need not address sections 552.101 or 552.110.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the

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<sup>2</sup>The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 (2001).

full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

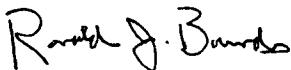
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/RWP/sdk

Ref: ID# 164275

Enc: Submitted documents

c: Mr. John Nero  
Senior Account Executive  
ACS Enterprise Solutions, Inc.  
500 Elm Street, Suite 504  
Dallas, Texas 75202  
(w/o enclosures)

Ms. Vanessa King  
Service Delivery Manager  
Schlumberger Network Solutions  
5599 San Felipe, Suite 400  
Houston, Texas 77056-2720  
(w/o enclosures)